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February 14, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222, Mail Stop 1170
Washington, D.C. 20554

Re: Ex Parte Submission, RM 8392

Dear Mr. Caton:

On behalf of IDB Communications Group, Inc. ("IDB"), I am submitting the attached Reply Comments in the above-referenced rulemaking proceeding.

Respectfully submitted,

Robert J. Aamoth

Counsel for IDB

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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the Matter of	)	
	)	
Petition for Rulemaking to Adopt a Uniform Definition of Facilities-Based Carrier	)	RM 8392

TO: The Commission

REPLY COMMENTS

IDB Communications Group, Inc. ("IDB"), by its attorneys, hereby replies to AT&T's late-filed comments in the above-captioned proceeding.[1] AT&T opposes IDB's petition for rulemaking to establish a uniform definition of facilities-based carrier. No other party opposed the petition.

AT&T claims (at 2) that the Commission established a comprehensive definition of facilities-based carrier in its reconsideration order in CC Docket No. 90-337. See Regulation of International Accounting Rates, 7 FCC Rcd 7927, 7931 (1992). The Commission did no such thing. Rather, the Commission responded to AT&T's specific proposal that the international private line ("IPL") resale policy apply to private cables and separate satellite systems. The Commission rejected AT&T's proposal as outside the scope of the proceeding. However, the Commission went

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[1] IDB previously filed an "Opposition to Request for Acceptance of Late-filed Comments, or in the Alternative, Motion to Provide Further Public Notice" ("Opposition") on January 27, 1994 in response to AT&T's motion to accept its late-filed comments ("Motion"). The Commission has not yet acted upon AT&T's Motion or IDB's Opposition. Therefore, IDB is submitting these Reply Comments as an ex parte filing without prejudice to its Opposition.

on to clarify that U.S. carriers who acquire capacity from private cables or separate satellite systems would have the same facilities-based status as carriers who lease capacity from Comsat. The Commission did not address the status of U.S. or foreign carriers who lease facilities from common carrier or public cables. The Commission did not even address the status of U.S. carriers who purchase an ownership or IRU interest in such cables. The Commission plainly did not intend by its limited discussion of private cables and separate satellite systems to promulgate a comprehensive definition of facilities-based carrier.

AT&T's claim (at 1) that it would "serve no purpose" to clarify the definition of facilities-based carrier is equally baseless. AT&T believes, without support, that carriers who lease capacity in common carrier cables cannot be facilities-based carriers under any circumstances. However, the Commission has stated several times that carriers who own or lease international facilities are facilities-based carriers.[2] In the context of numerous Section 214 applications, the Commission has held that carriers who lease cable facilities are facilities-based carriers.[3] IDB has brought those decisions to AT&T's attention

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[2] E.g., "Manual for Filing Section 43.61 Data," FCC Report 43.61 (July 1992) at 4 & 12.

[3] E.g., Westinghouse Communications Services, Inc., 6 FCC Rcd 1771 (1991) (carrier leased from MCI twenty-four 56 KBPS circuits -- or one T-1 circuit -- in the TCS-1 cable); NetExpress Communications, Inc., 7 FCC Rcd 51 (1992) (carrier leased two 56-64 KBPS circuits between the U.S. and Japan); IT&E Overseas, Inc., 4 FCC Rcd 8345 (1989) (carrier leased 30 MAUOs in the TPC3/HAW-4 cables). See also Letter to K. Kneff, FCC, from R. Koppel, IDB (Mar. 24, 1993) (IC-93-02151) at pages 3-7 & n.2.

several times, but AT&T has declined to address or even acknowledge them. It is disingenuous for AT&T to argue against clarifying the definition of facilities-based carrier when AT&T's own definition contradicts Commission precedent.

AT&T argues (at 3) that IDB's proposed definition of facilities-based carrier -- namely, a carrier who obtains the maximum interest in the underlying facilities permitted by law -- would "vitiate" the meaning of the term. In fact, under IDB's proposed definition, the large majority of U.S. international carriers would not qualify as facilities-based carriers. Most U.S. carriers obtain less than the maximum interest permitted in the underlying facilities and, under IDB's proposed definition, would not be facilities-based carriers.

Further, AT&T has offered no reason why a carrier obtaining the maximum interest permitted by law should be regulated as a resale carrier. AT&T itself benefits from the maximum interest approach when it leases INTELSAT capacity from Comsat. It reflects an arbitrary double standard for AT&T to contend that it qualifies as a facilities-based carrier when it must lease capacity due to legal restrictions upon ownership, but that other carriers in identical situations (i.e., new entrants in foreign markets who must lease from foreign monopoly or duopoly carriers) should be regarded as resale carriers.[4]

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[4] In its formal complaint proceeding (E-93-103) against World Communications, Inc., Worldcom International, Inc. and WorldCom GmbH, AT&T proffered a novel "carrier's carrier" theory to justify regulating AT&T as a facilities-based carrier when it leases capacity from Comsat. See "Opposition

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AT&T contends (at 3) that IDB's proposed definition would "hamper U.S. efforts to promote open telecommunications markets world-wide." AT&T's comment is highly ironic, as AT&T is opposing IDB's petition to limit the ability of IDB and other U.S. companies to enter foreign telecommunications markets. Moreover, AT&T points to no evidence, nor is there any, that facilities-based entry into foreign markets harms U.S. carriers or consumers. AT&T is simply reiterating its now-weathered proposal that the Commission expand its policy to prohibit all IPL interconnection at carriers' central offices, regardless whether the carrier is facilities-based. IDB submits that this is not the time or place to rehash AT&T's policy proposals, which have been uniformly opposed by interested parties and previously rejected by the Commission in CC Docket No. 90-337, Phase II. The Commission should not allow AT&T to transform this limited rulemaking proceeding into another referendum on AT&T's aggressive policy proposals for restricting access to the U.S. telecommunications market.[5]

Strangely, AT&T claims (at 4) that the Commission's ongoing rulemaking on the filing of international circuit status

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to Motion to Dismiss," E-93-103, filed by AT&T on Dec. 23, 1993, at 9. That theory completely falls apart upon close scrutiny. See "Reply to Opposition to Motion to Dismiss," E-93-103, filed by Defendants on Jan. 14, 1994, at 7-8.

5 For IDB's response to AT&T's policy proposals, see, e.g., "Reply Comments of IDB Communications Group, Inc.," RM-8355, filed Nov. 16, 1993; "Supplemental Comments of IDB Communications Group, Inc.," CC Docket No. 90-337, Phase II, filed Sept. 21, 1993; "Comments of IDB Communications Group, Inc.," CC Docket No. 90-337, Phase II, filed Feb. 12, 1993.

reports (CC Docket No. 93-157) is the proper forum for broadly addressing the definition of facilities-based carrier. This is precisely the opposite of what AT&T told the Commission in that proceeding. AT&T urged the Commission to adopt its proposed definition of facilities-based carrier for use "only in the context of identifying which carriers are required to file Circuit Status Reports."[6] AT&T's real agenda is disclosed by its outrageous position (at 4-5) that the Commission should not consider IDB's proposal in any proceeding whatsoever.[7] IDB is entitled to full consideration of its petition, which it formulated in response to an important issue that has not been clearly or comprehensively addressed by the Commission. However, IDB has no preference whether the Commission adopts a uniform and non-discriminatory definition of facilities-based carrier in the instant proceeding or in another proceeding.

Lastly, AT&T makes a misstatement which should be corrected on the record. AT&T speculates (at 4) that adoption of IDB's proposal would require accounting rates for IPLs. AT&T's putative concern is specious. IPLs have never been subject to

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6 See "Reply Comments of AT&T," CC Docket No. 93-157, filed Oct. 1, 1993, at 4. This is the second time AT&T has repudiated its position in that proceeding. In an informal ex parte meeting with Commission staff on September 24, 1993 in IC-93-02151, AT&T urged the Commission to use the proposed definition in CC Docket No. 93-157 as the definitive criterion for a facilities-based carrier.

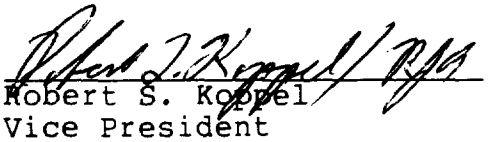
7 In particular, AT&T urged the Commission to resolve this issue in CC Docket No. 93-157 and to exclude IDB's "broader request" from that proceeding.

accounting rates or settlements, and nothing in IDB's proposal would change that.

For the foregoing reasons, IDB submits that the Commission should proceed expeditiously to issue the requested Notice of Proposed Rulemaking.

Respectfully submitted,

IDB COMMUNICATIONS GROUP, INC.

By: 
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February 14, 1994

CERTIFICATE OF SERVICE

I, Danita Boonchaisri, hereby certify that I have caused a copy of the foregoing "Reply Comments" to be served on this 14th day of February, 1994, by U.S. mail, first class postage prepaid, upon the following:

Stephen C. Garavito
AT&T
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Basking Ridge, NJ 07920

Danita Boonchaisri